IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL ST.NO.12721 OF 2006

The Secretary,
Sahyogi Shikshan Sangha
Thane, .. Appellants.
Vs.
Anand Vallabh Dangwal & Anr. .. Respondents.

Mr.Sandesh Patil for the appellants.
Mr.Amol Desai for respondent no.1.

CORAM : D.B.BHOSALE, JJ.
DATED : 3RD JULY, 2007.

P.C.:

. Heard learned counsel for the appellants and respondent no.1.

2. This appeal is filed by original defendant no.1. The suit filed by respondent no.1 for declaration and mandatory injunction came to be decreed by the judgment and order dated 31.11.2000. By this judgment the defendants were directed to release the difference of untrained and trained graduate pay scale to the plaintiff from 23.6.1977 to 22.6.1979 with interest at the rate of 12% per annum. It was carried by the plaintiff in appeal and in appeal the decree was modified holding that the plaintiff is entitled for arrears of pay as per the trained graduate scale from 1.8.1978 till the date of

retirement. It was further held that he is entitled for arrears of Rs.72,473.20 Ps. with interest at the rate of 6% from the date of the suit till the realisation of the amount. It is pertinent to note that the appellants did not challenge the judgment and decree of the trial Court nor did they appear in the appeal and in both the courts below the suit/appeal proceeded against them exparte. Keeping that in view and considering the concurrent findings recorded by the courts below no intereference is called for by this court in the instant second appeal. Hence the appeal is dismissed.

3. At this stage Mr.Sandesh Patil, learned counsel for the appellant submits that the appellant would like to proceed against respondent nos.3 and 4 to recover the amount deposited by them in this court as per the decree and they may be given such liberty. The respondent-plaintiff has no objection for granting such liberty if he is allowed to withdraw the amount deposited by the appellant unconditionally. Having considered the submissions of the learned counsel for the parties, respondent no.1 is allowed to withdraw the amount deposited by the appellant in this court in pursuance of the order dated 14.12.2006 unconditionally. It is open for the appellant to adopt proceedings, as may be available

in law, against respondent nos.3 and 4 to recover the amount paid by them to the respondent-plaintiff. While granting liberty to the appellant to adopt appropriate proceedings I shall not be understood to have examined the merits of his contention. If the proceedings as aforestaed are initiated against the appellant, the same may be considered and dealt with in accordance with law.

4. Mr.Desai, learned counsel for respondent no.1-plaintiff submit that since the respondent-plaintiff is allowed to withdraw the amount deposited by the appellant the decree stands satisfied and in view thereof the respondent-plaintiff will make formal application before the executing court for withdrawal of the execution proceedings. His statement is accepted. The respondent-plaintiff to file appropriate application seeking permission to withdraw the execution proceedings within a period of four weeks from today. The second appeal is disposed of.

(D.B.BHOSALE, J.)